Supreme Court, U.S.
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No. 92-927

In The
Supreme Court of the United States
October Term, 1992

United States of America, ex rel.,
The Precision Company,

Petitioner,

v.

Koch Industries, Inc., et al.,

Respondents.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Tenth Circuit

PETITIONER'S REPLY TO RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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February 2, 1993

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Petitioner's Reply to
Respondents' Brief in Opposition to
Petition for Certiorari

Introduction

The United States of America, ex rel. The Precision Company herewith submits, pursuant to Supreme Court Rule 15.6, and for the purpose of clarifying the record, the following Reply to Respondents' Brief in Opposition to Petition for Certiorari.

Petitioner Has Never Conceded That Its Action Is Based Upon Public Disclosures

Respondents' Brief in Opposition to Petition for Certiorari is based, in large part, upon the false premise that Petitioner conceded in the district court that its action is based in part upon public disclosures, and that such a finding went "uncontested" in the court of appeals. Indeed, Respondents make that assertion four times. Respondents'

Brief, at 9, 12, and 13. Respondents thus wrongly denigrate the Petition for Certiorari as nothing more than an attempt to "revisit district court factual findings that went entirely uncontested below." Id., at 13. Respondents' representations are directly contrary to the record in this case.

The Petition for Certiorari focuses upon Petitioner's claim that its action arose from and therefore is "based upon" evidence gathered during Petitioner's independent investigation of Koch Industries, Inc. Petition, at 12-13. This claim did not arise, as Respondents suggest, for the first time in this Court. Petitioner has taken the same position throughout this litigation:

1. In response to the Motion to Dismiss filed by Respondents in the district court, Petitioner argued that "Precision's complaint is in fact based on an independent, extensive and continuing investigation of defendants' fraudulent misconduct." Aplt App, Doc 4, p. 89-90;

2. In response to the objection filed by Respondents to the magistrate's Findings and Recommendations in the district court, Petitioner argued that the complaint is "not based upon publicly disclosed information." Aplt App. Doc 11, pp. 424-427;

3. In its opening brief in the court of appeals, Petitioner argued that its "independent investigation" formed the basis for its action. Appellant's Opening Brief, at 12-13; and

4. In its reply brief in the court of appeals, Petitioner devoted three pages of argument to the proposition that its action is not "based upon" prior public disclosures, but, rather, upon Petitioner's "independently gathered evidence." Appellant's Reply Brief, at 6-9.

The record clearly shows that Petitioner consistently argued that its action is not "based upon" public disclosures within the meaning of Section 3730(e)(4)(A).

The Petition for Certiorari raises important issues regarding the proper interpretation of the jurisdictional provisions of the False Claims Act, and represents the only way important claims held by a large number of Native Americans will ever be heard. Brief *Amicus Curiae*, at 4-5. Respondents' Brief in Opposition utilizes gross mischaracterizations of the record in an attempt to deflect the Court's attention from these important issues. Having clarified these mischaracterizations, Petitioner respectfully requests that this Court grant the Petition, and that the Court provide the lower courts with the guidance they need to properly interpret 31 U.S.C. §3730(e)(4)(A) and (B).

Respectfully submitted,

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